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Paper No. 31

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OFFICE OF PETITIONS

ON PETITION

In re Application of
Eugene P. Goldberg et al.
Application No. 08/141,017
Filed: October 26, 1993
Attorney Docket No. 4733

This is a decision on the petition under 37 CFR 1.137(a), filed June 30, 2003, to revive the above-identified application. This decision is also on the petition filed June 30, 2003 to withdraw the holding of abandonment under 37 CFR 1.181(b), in accordance with the reasoning of the decision in Delgar Inc. v. Schuyler, 172 USPQ 513.

The petition under 37 CFR 1.137(a) is **dismissed as moot**.

The petition under 37 CFR 1.181(b) is **granted**.

The application was held abandoned on November 8, 2002, for failure to timely submit a response to the non-Final Office Action mailed August 7, 2002. A three (3) month period for reply was set and no extensions of time to file the response were requested or granted. Accordingly, a Notice of Abandonment was mailed May 7, 2003.

Petitioner argues that a change of address was filed November 20, 2001 prior to the mailing of the non-Final Office Action. A review of the file does not reveal that a Change of Address was received in this file however, in view of the copy of the properly itemized postcard receipt with the USPTO date stamp, we will accept that the change of address mailed November 21, 2001 was not properly matched with the file and that the non-Final Office Action mailed August 7, 2002 was mailed to the wrong address.

The evidence provided corroborates non receipt of the non-Final Office Action. Accordingly, the holding of abandonment is withdrawn. In view of the above, there is no need to treat the petition under the unavoidable standard of review, 37 CFR 1.137 (a). The terminal disclaimer will also not be entered. The petition fee in the amount of \$110.00 as well as the terminal disclaimer fee \$110.00 will both be refunded.

This application is being forwarded to Technology Center 1600 for further processing.

Telephone inquiries concerning this matter should be directed to the undersigned Petitions Attorney at (703) 305-4497.

Patricia Faison-Ball
Senior Petitions Attorney
Office of Petitions